

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	Cr. ID. No. 1101021242
)	
)	
LESHAUN WASHINGTON,)	
)	
Defendant.)	

Submitted: June 27, 2023
Decided: August 18, 2023

**COMMISSIONER’S REPORT AND RECOMMENDATION
THAT DEFENDANT’S MOTION TO AMEND MOTION
FOR POSTCONVICTION RELIEF BE GRANTED, AND
THE MOTION FOR POSTCONVICITON RELIEF SHOULD BE
SUMMARILY DISMISSED**

Joseph Grubb, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

LeShawn Washington, James T. Vaughn Correctional Center, Smyrna, Delaware, *pro se*.

O’CONNOR, Commissioner

This 18th day of August, 2023, upon consideration of Defendant's Motion for Postconviction Relief, the State's Response to Defendant's Motion for Postconviction Relief, the State's Supplemental Response to Defendant's Motion for Postconviction Relief, Defendant's Motion to Amend, and the record in this matter, the following is my Report and Recommendation.

FACTUAL AND PROCEDURAL BACKGROUND

During the evening of January 20, 2011, gunfire erupted inside the First State Lanes bowling alley. At least six patrons were struck by bullets fired by at least five guns.¹ The trial testimony and surveillance evidence (videos and still photos) established Defendant LeShaun Washington ("Defendant") was at First State Lanes during the shooting, firing a handgun.² Among other evidence, the State presented the trial testimony of Anthony Stanley ("Stanley"), which was supplemented by a 11 *Del. C.* § 3507 post-*Miranda* recorded interview, where Stanley admitted he possessed and fired a handgun in the bowling alley, and told New Castle County Police Department Detective Steven Legenstein that the Defendant shot him. Ryan Geary testified that while in the same prison housing pod as Defendant prior to Defendant's trial, Defendant admitted firing a handgun in the bowling alley and

¹ Docket Item ("D.I.") 43, October 26, 2011 Trial Tr., Testimony of NCCPD Officer Jonathan Yard, 8:7-9; Testimony of Linda Ramsey, R.N., 149:20-150:4; D.I. 42, October 25, 2011 Trial Tr., Testimony of Carl Rone, 113:1-16.

² D.I. 45, October 27, 2011 Trial Tr., Testimony of Detective Steven Legenstein, 141:2-142:2; 143:22-144:18; *also see* State's Ex. 2, 10, 152, 153, 154.

striking one person below the waist.³ JoeQuell Coverdale (“Coverdale”) saw the Defendant with a black handgun after the shooting, and that Defendant admitted shooting Stanley, saying “I think I got him, I think I got someone, I hit him.”⁴ According to Coverdale, the motive for the shooting was an “ongoing beef” between the Defendant and Stanley.⁵

On October 31, 2011, after a five-day trial, a jury found Defendant guilty of four counts of Assault First Degree, two counts of Assault Second Degree, six counts of Reckless Endangering First Degree, and twelve counts of Possession of a Firearm During the Commission of a Felony.⁶

On June 8, 2012, the Court sentenced Defendant to an aggregate sentence of ninety-four years Level V, suspended after serving fifty-six years, followed by probation.⁷ The Delaware Supreme Court affirmed Defendant’s convictions on direct appeal.⁸

³ D.I. 45, October 27, 2011 Trial Tr., 109:19-110:16. Stanley was shot twice below the waist.

⁴ D.I. 43, October 26, 2011 Trial Tr., 173:8–174:10.

⁵ *Id.*, 175:7–176:8. Additionally, on February 11, 2011, Stanley made a prison phone call where he expressed his dissatisfaction that Defendant was a sentenced inmate, because he wanted to avenge the shooting himself. *See* Ct. Ex. 3, Recording of Prison Call.

⁶ D.I. 36. The State prosecuted Defendant on a theory of reckless causation, in accord with *State v. Witherspoon*, 1999 WL 744429 (Del. Super. July 30, 1999), *aff’d*, *Witherspoon v. State*, 2001 WL 138499 (Del. May 22, 2001).

⁷ D.I. 40, June 13, 2012 Sentence Order.

⁸ *Washington v. State*, 2013 WL 961561 (Del. Mar. 12, 2013). On direct appeal, Washington raised one claim, asserting this Court abused its discretion when it permitted the introduction of witness Anthony Stanley’s prior out-of-court statement pursuant to 11 *Del. C.* § 3507. *Id.* at *1.

On March 12, 2014, Defendant filed a Motion for Postconviction Relief.⁹ Therein, Defendant asserted counsel was ineffective for: (1) failing to “adequately prepare the defendant for trial by failing to advise him of the nature and extent of the evidence against him and to provide counsel with the ability to attack, discredit, or minimize that evidence through cross-examination of the witnesses;”¹⁰ (2) failing to be prepared for trial in that counsel did not appear to be aware of the content of the video surveillance evidence, the content of many recorded witness interviews, or the photographic evidence;¹¹ (3) failing to provide Defendant with document discovery and failing to review the video and photographic evidence with defendant before trial;¹² (4) failing to object to late-produced discovery, or alternatively to request a trial continuance;¹³ and (5) counsel was ineffective for failing to “adequately disclose and discuss with the defendant the plea offers made by the State.”¹⁴ The Superior Court denied the Motion, concluding Defendant’s postconviction claims were meritless.¹⁵

⁹ D.I. 53, March 12, 2014 Motion for Postconviction Relief.

¹⁰ *Id.*, p. 2, ¶ 12.

¹¹ *Id.*

¹² *Id.*, p. 3, ¶ 12.

¹³ *Id.*

¹⁴ *Id.*, p. 4, ¶ 12.

¹⁵ *State v. Washington*, Case No. 1101021242, Mem. Op. and Order (Del. Super. Aug. 28, 2014). The Delaware Supreme Court affirmed the Opinion of the Superior Court. *See Washington v. State*, 2015 WL 789794 (Del. Feb. 24, 2015).

In February 2016, Defendant filed a Federal Habeas Corpus Petition in the United States District Court for the District of Delaware.¹⁶ Defendant argued:

The trial court erred by admitting the § 3507 statement of JoeQuell Coverdale; the indictment was multiplicitous; Petitioner was denied his right to a public trial; defense counsel provided ineffective assistance; and the State engaged in prosecutorial misconduct by presenting perjured testimony.¹⁷

On May 8, 2017, the District Court dismissed Defendant's Habeas Corpus petition.¹⁸

On August 23, 2022, Defendant filed a second Motion for Postconviction Relief.¹⁹ In this successive Motion, Defendant presents several convoluted and overlapping claims. Defendant's claims include: (1) the State committed misconduct by withholding favorable evidence from Defendant; (2) the Prosecutor failed to "repair damage" when a State's witness provided false testimony; (3) counsel was ineffective for failing to conduct pretrial investigation(s); (4) counsel was ineffective for failing to discover and present exculpatory evidence; (5) the prosecutor withheld identification evidence; (6) the State gave its "star witness" a promise or benefit that wasn't disclosed on the record; (7) the State committed misconduct when it knowingly presented false testimony; (8) information regarding a jailhouse informant's prior cooperation with the State was withheld from the

¹⁶ *Washington v. Pierce*, 2017 WL 1843888 (D. Del. May 8, 2017).

¹⁷ *Id.*, at *2.

¹⁸ *Id.* at *3 n.5.

¹⁹ D.I. 68, August 23, 2022 *Pro se* Motion for Postconviction Relief.

defense; (9) the State violated Defendant right to a public trial; (10) counsel was ineffective for failing to “protect Defendant’s right to an impartial jury;” (11) counsel was ineffective for failing to allow the “multiplicitous Indictment count;” (12) irreparable prejudice amounted to a miscarriage of justice; and (13) trial and appellate counsel were ineffective for failing to raise claims in this Court or on direct appeal.²⁰

On October 14, 2022, the State filed a Response to Defendant’s Motion for Postconviction Relief, and on March 29, 2023, the Defendant submitted a letter to the Court amending the pending Motion for Postconviction Relief to include an Affidavit from Stanley. On June 2, 2023, the State filed a Supplemental Response to Defendant’s Motion for Postconviction Relief Pursuant to Rule 61.

On June 27, 2023, the Defendant sought to amend his Motion a second time to include two additional claims: (14) Defendant’s Rule 61 counsel was ineffective when he did not assert trial counsel was ineffective by failing to object to the Court exercising its discretion in compelling Stanley to testify despite his attempt to assert his Fifth Amendment privilege against self-incrimination;²¹ and (15) Rule 61 counsel was ineffective for failing to raise a claim that trial counsel was ineffective in failing to object to a recess, which allowed Stanley to speak to his attorney after

²⁰ *Id.*

²¹ D.I. 93, Motion to Amend.

attempting “to invoke his Fifth Amendment privilege to remain silent so he could consult with his lawyer.”²²

ANALYSIS

A. Procedural Bars

In any motion for postconviction relief, this Court must first determine whether a defendant has satisfied the procedural requirements of Superior Court Criminal Rule 61 before considering the merits of the underlying claims.²³ Here, the State argues that Defendant’s Motion is procedurally barred, and therefore this Court need not consider Defendant’s claims. Defendant argues, in primary reliance on *Webster v. State*,²⁴ that the Court can consider procedurally barred claims where a defendant raises “colorable claims” which meet the “fundamental fairness” exceptions of Rule 61.²⁵ Defendant’s reliance on *Webster* is misplaced.

Defendant seeks to overcome the procedural bar in Rule 61(i) by relying on a prior version of Rule 61(i)(5).²⁶ Specifically, prior to June 4, 2014, Rule 61(i)(5)

²² *Id.* The Court will consider these two claims as supplements to Defendant’s Motion for Postconviction Relief. *See Johnson v. State*, 2015 WL 2415526, at *1 (Del. Super. May 13, 2015). The claims are numbered 14 and 15 here to be referenced *supra* in this Report and Recommendation.

²³ *Taylor v. State*, 32 A.3d 374, 388 (Del. 2011) (quoting *Shelton v. State*, 744 A.2d 465, 474 (Del. 1999)).

²⁴ *Webster v. State*, 604 A.2d 1364, 1366 (Del. 1992).

²⁵ D.I. 68, Motion for Postconviction Relief at 6.

²⁶ This Court is required to apply the version of Rule 61(i)(5) in effect at the time Defendant filed the Motion. *Jones v. State*, 2015 WL 6746873, at *1 n.4 (Del. Nov. 14, 2015) (citing Order Amending Rule 61 of the Superior Court Rules of Criminal Procedure (Del. Super. June 4, 2014)).

allowed defendants relief from the procedural bars noted in Rule 61(i)(1)-(4) if they could show the court lacked jurisdiction or that the defendant made a “colorable claim that there was a miscarriage of justice because of a constitutional violation.” But, on June 4, 2014, Rule 61(i)(5) was amended. The amended Rule removed the “miscarriage of justice” standard and substituted the following:

“The bars to relief in paragraphs (1), (2), (3), and (4) of this subdivision shall not apply either to a claim that the court lacked jurisdiction or to a claim that satisfies the pleading requirements of subparagraphs (2)(i) or (2)(ii) of subdivision (d) of this rule.”²⁷

To invoke this revised Rule the Defendant must (a) claim this Court lacks jurisdiction,²⁸ or (b) plead with particularity that new evidence exists that creates a strong inference that movant is actually innocent in fact of the acts underlying the charges of which he was convicted,²⁹ or (c) plead with particularity a claim that a new rule of constitutional law was made retroactive to cases on collateral review by the Delaware Supreme Court or the United States Supreme Court applies to his case and renders his conviction invalid.³⁰ Defendant has failed to do so. A review of Defendant’s postconviction claims, as they are evaluated within the framework of Rule 61(i)’s current procedural bars, follows below.

²⁷ Super. Ct. Crim. R. 61(i)(5).

²⁸ *Id.*

²⁹ Super. Ct. Crim. R. 61(d)(2)(i).

³⁰ Super. Ct. Crim. R. 61(d)(2)(ii).

Rule 61(i) includes five subsections which contain procedural bars to postconviction relief. If the Defendant cannot overcome the procedural bars, the Court will not consider his claims and his Motion will be summarily dismissed.

First, Rule 61(i)(1) prohibits the Court from considering a motion for postconviction relief filed more than one year after the judgment of conviction is final, unless the motion asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right is recognized by the Delaware Supreme Court or the United States Supreme Court.³¹

Here, Defendant's untimely filed Motion is procedurally barred pursuant to Rule 61(i)(1). Consideration of this procedural bar is triggered by the date a Defendant's judgment of conviction becomes final, which, in this case, is April 2, 2013.³² So, to timely file a postconviction motion, Defendant would have had to file it on or before April 2, 2014.

On August 23, 2022, Defendant filed the present Motion, more than nine years after the judgment of conviction became final. As Defendant has failed to plead

³¹ Super. Ct. Crim. R. 61(i)(1). A judgment of conviction is final "when the Supreme Court issues a mandate or order finally determining the case on direct review." *State v. Drake*, 2008 WL 5264880, at *1 (Del. Super. Dec. 15, 2008). Rule 61(i)(1) also affords a Defendant an opportunity to present a motion which "asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court." *Id.*

³² D.I. 52, Mandate of the Delaware Supreme Court.

with particularity a retroactively applicable right to his case that was newly recognized after the judgment of conviction became final, his Motion is procedurally barred pursuant to Rule 61(i)(1).

Second, Rule 61(i)(2) prohibits a Defendant from filing repetitive motions for postconviction relief. This is Defendant's second, successive Motion, and it is procedurally barred, subject to summary dismissal, unless he satisfies Rule 61(d)(2) – by pleading with particularity that new evidence exists that creates a strong inference that he is actually innocent in fact of the acts underlying the charges of which he was convicted, or pleading with particularity that a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies to his case and renders his conviction invalid.³³ Defendant's Motion is procedurally barred as a successive Motion pursuant to Rule 61(i)(2), and as is discussed *supra*, he has failed to satisfy Rule 61(d)(2)(i).³⁴

Third, Rule 61(i)(3) provides that “any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this Court, is thereafter barred, unless the movant shows (a) cause for relief from the

³³ Super. Ct. Crim. R. 61(d)(2)(i)-(ii).

³⁴ *Id.* Defendant has not claimed he can overcome the procedural bar by meeting the standard set forth in Rule 61(d)(2)(ii) – that a new rule of constitutional law, made retroactive to cases on collateral review, applies to this case and renders his conviction invalid.

procedural default and (b) prejudice from the violation of movant's rights.”³⁵ Here, Defendant raises for the first time the following claims for relief: Claims 1, 2, 5, 6, 8, 10, 12, 13, 14 and 15.³⁶ Defendant has not demonstrated cause for failing to raise these claims earlier, and has not established prejudice from his failure to do so. These claims are procedurally barred pursuant to Rule 61(i)(3).

Fourth, Rule 61(i)(4) considers formerly adjudicated postconviction claims. It provides that “[a]ny ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred.”³⁷ Claims 3, 4, 7, 9 and 11 were previously raised in Defendant's February 2016 Federal Habeas Corpus Petition, and the Federal District Court dismissed them on May 8, 2017.³⁸ These claims are procedurally barred as formerly adjudicated.

Rule 61(i)(5) provides that the procedural bars provided in Rules 61(i)(1)-(4) do not apply to a claim that the Court lacked jurisdiction or if the Defendant satisfies the pleading requirements of Rule 61(d)(2)(i) or (d)(2)(ii).³⁹

Under the current versions of Rule 61(i)(2) and Rule 61(i)(5), a defendant may overcome applicability of the procedural bars if he satisfies either sub-part of Rule

³⁵ Super. Ct. Crim. R. 61(i)(3).

³⁶ *See infra*, p. 5-7.

³⁷ Super. Ct. Crim. R. 61(i)(4).

³⁸ *See Washington*, 2017 WL 1843888.

³⁹ Super. Ct. Crim. R. 61(i)(5). Defendant has not claimed this Court lacked jurisdiction over his trial, appeal or postconviction proceedings.

61(d)(2): a defendant must either “plead with particularity that new evidence exists that creates a strong inference that movant is actually innocent in fact of the acts underlying the charges of which he was convicted,”⁴⁰ or “plead with particularity a claim that a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or Delaware Supreme Court, applies to the movant’s case and renders the conviction or death sentence invalid.”⁴¹

Defendant does not claim a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies. And, pursuant to Rule 61(d)(2)(i), Defendant has failed to plead with particularity that new evidence exists that creates a strong inference that he is actually innocent in fact of the acts underlying the charges of which he was convicted. Therefore, Defendant’s Motion should be summary dismissed.

1. Superior Court Criminal Rule 61(d)(2)(i).

To satisfy Rule 61(d)(2)(i), a defendant “shoulders a heavy burden in establishing that the existence of ‘new evidence’ creates a strong inference of his actual innocence.”⁴² A movant “cannot successfully navigate the ‘actual innocence’ standard with evidence that is ‘merely cumulative or impeaching.’” Thus, any new

⁴⁰ Super. Ct. Crim. R. 61(d)(2)(i).

⁴¹ Super. Ct. Crim. R. 61(d)(2)(ii). As noted *infra* at fn. 34, Defendant has not invoked Rule 61(d)(2)(ii) to overcome the procedural bars.

⁴² *State v. Madison*, 2022 WL 3011377 (Del. Super. July 29, 2022), *aff’d*, *Madison v. State*, 2022 WL 17982946 (Del. Dec. 29, 2022).

evidence ‘that goes only to the weight or credibility of that which was presented to the [factfinder] is almost never adequate to meet the demanding bar for being granted a new trial.’”⁴³ And, recantation evidence, upon which Defendant relies, is “properly viewed with great suspicion. It upsets society’s interest in the finality of convictions, is very often unreliable and given for suspect motives, and most often serves to only impeach cumulative evidence rather than to undermine confidence in the accuracy of the conviction.”⁴⁴ When recantation evidence “merely impeaches [a witness’s] trial testimony- [it] does not constitute new evidence that proves actual innocence.”⁴⁵

a. “New” evidence pursuant to Rule 61(d)(2)(i).

To overcome the procedural bars, Defendant must present “new” evidence. In the context of a motion for postconviction relief, “new” evidence is evidence discovered after trial which could not have been discovered before trial with due diligence.⁴⁶ “New” evidence is not evidence recently created, as here, by the submission of affidavits and transcribed interview statements provided by declarants or witnesses who either testified at trial or were known to the parties before trial.⁴⁷

⁴³ *Id.* (citing *Purnell v. State*, 254 A.3d 1053, 1100 (Del. 2021)).

⁴⁴ *Dobbert v. Wainwright*, 468 U.S. 1231, 1233-34 (1984). Delaware Courts also view recantation evidence with suspicion. *State v. Washington*, 2021 WL 5232259, at * 6 (Del. Super. Nov. 9, 2021), *aff’d Washington v. State*, 2022 WL 1041267 (Del. Apr. 7, 2022).

⁴⁵ *Washington*, 2021 WL 5232259, at *6 (citing *Taylor v. State*, 180 A.3d 41 (Del. 2018)), *Downes v. State*, 771 A.2d 289, 291 (Del. 2001).

⁴⁶ *Lloyd v. State*, 534 A.2d 1262, 1267 (Del. 1987).

⁴⁷ *State v. Riddick*, 2022 WL 17820366, at *5 (Del. Super. Dec. 19, 2022).

Evidence in the form of affidavits or transcribed interview statements from a prior trial witness constitutes a retelling, or a revised version of a prior statement by the same witness, and is not “new” evidence.⁴⁸ None of the evidence upon which Defendant relies constitutes “new” evidence which should have been discovered before trial with due diligence.

b. Evidence which creates a strong inference that Defendant is actually innocent in-fact of the acts underlying the charges for which he was convicted.

Assuming, for argument’s sake, that the affidavits and transcribed interview statements relied upon by Defendant are “new” evidence which could not have been discovered before trial with the exercise of due diligence, Defendant must next demonstrate that the aforementioned “new” evidence “creates a strong inference that movant is innocent in fact of the acts underlying the charges of which he was convicted.” Stated differently, the evidence must speak with such persuasive force as to create a strong inference that the Defendant is actually innocent in fact of the acts underlying his convictions.⁴⁹ Defendant’s purported evidence does not demonstrate he is innocent in fact of the charges, and does not suggest that a person

⁴⁸ *Id.*

⁴⁹ *State v. Stokes*, 2022 WL 2783813, at *2-3, (Del. Super. July 14, 2022) (“‘Actual innocence means factual innocence,’ not legal innocence. In other words, ‘the State convicted the wrong person.’” (citing *Bousley v. United States*, 523 U.S. 614, 623 (1998); *Sawyer v. Whitley*, 505 U.S. 333, 340 (1992); *State v. Taylor*, 2018 WL 3199537, at *8 (Del. Super. June 28, 2018) (Proving actual innocence “requires new evidence that a person other than the [movant] committed the crime.”), *aff’d*, *Taylor v. State*, 2019 WL 990718 (Del. Feb. 27, 2019). *Accord Purnell v. State*, 254 A.3d 1053, 1097 (Del. 2021)).

other than Defendant committed the crime. The Court will now consider Defendant's affidavits and transcripts in the framework of Rule 61(d)(2)(i).⁵⁰

1. Anthony Stanley

Defendant submitted an Affidavit dated November 1, 2022 from Stanley. Stanley is Defendant's antagonist in the bowling alley shooting. Video and photographic evidence depicted Defendant shooting at Stanley in the bowling alley,⁵¹ and Stanley fired several retaliatory rounds at Defendant.⁵²

Stanley was, at best, a reluctant prosecution witness. After being asked his name, he immediately attempted to invoke his Fifth Amendment right against self-incrimination.⁵³ After a short discussion with his attorney, and acknowledging that he pled guilty and agreed to testify at Defendant's trial, Stanley testified that he voluntarily spoke to the Detective investigating the shooting, but claimed he did not tell him the truth about what occurred.⁵⁴ Given Stanley's statement, the State

⁵⁰ The majority of Defendant's "new" evidence, in the form of affidavits and interview transcripts, are cumulative evidence of Coverdale's recantation. Coverdale's trial testimony, as discussed *supra*, was inculpatory. Defendant's "new" evidence includes a recantation from Coverdale, Brown reporting that "Coverdale lied about being with the Defendant at the crime scene;" Land relaying Coverdale was not present when she drove Defendant from the bowling alley; and finally Clark, who denied being at the First State Bowling alley on the day of the shooting. DI 68, Motion for Postconviction Relief at 14-15.

⁵¹ See fn. 2, *infra*.

⁵² Stanley pled guilty to his role in the shooting and agreed to testify against Defendant as part of his plea agreement with the State.

⁵³ D.I. 46, October 27, 2011 Trial Tr., 50:7, 76:20.

⁵⁴ *Id.*, 55:9-56:10.

entered into evidence and played for the jury Stanley's January 29, 2011 video-recorded 11 *Del. C. § 3507* statement.⁵⁵

Consistent with the reticence Stanley exhibited during his trial testimony, he was, during the January 29, 2011 police interview, a reluctant witness. He initially denied possessing or firing a handgun, denied knowing who shot him, and told the Detective that even if he knew who shot him, he would not tell him who did it.⁵⁶ Stanley refused to tell the Detective who shot him because of the "streets," and he conditioned his level of cooperation by telling the detective "I'm gonna be as cooperative *as I can*."⁵⁷

As the interview continued, the Detective confronted Stanley's denials with surveillance video excerpts depicting the shooting.⁵⁸ And, the surveillance video depicted Stanley not only possessing a handgun, but firing it.⁵⁹ Stanley, realizing his denials to discharging a firearm in a crowded bowling alley were unsupported by the surveillance video and falling on deaf ears, told the Detective the argument was about "turf" between two different Wilmington groups, and "someone got

⁵⁵ Ct. Ex. 2.

⁵⁶ *Id.*

⁵⁷ *Id.* (emphasis added).

⁵⁸ *Id.*

⁵⁹ *Id.*

bumped.”⁶⁰ Stanley admitted firing several shots from a handgun, but he remained reluctant to identify the person he was shooting at.⁶¹

Stanley had been shot twice and was recorded on surveillance video firing a handgun in a crowded bowling alley. The Detective repeatedly explained to Stanley his exposure to criminal liability for participating in a shooting where several innocent people were shot.⁶² But, according to Stanley, directly cooperating with law enforcement would violate the code of the “streets.”⁶³ Stanley eventually told the Detective that if he could call his mom, he would tell her the details of the shooting, including who shot him.⁶⁴ Then, the Detective could talk to Stanley’s mom, and she would tell him who shot Stanley.⁶⁵ Stanley then called his mom, and the detective exited the interview room, leaving the recording equipment running.⁶⁶

On the call, Stanley told his mother “[the police] got me on tape shooting.”⁶⁷ He explained his group from Riverside got into an argument with the West Side boys, specifically Jenard Brown (“Brown”) and Littles.⁶⁸ Stanley told his mom that “the boy that actually shot me is the boy Littles,” and Littles shot at him first.⁶⁹ He

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ D.I. 43, October 26, 2011 Trial Tr. 214:19-215:3.

⁶⁹ Ct. Ex. 2.

then told his mother “all the rest of the West Side boys started shooting too. [The police] got me on tape of course so they know I was shooting back.”⁷⁰ To clarify Littles’ identity, Stanley told his mom, at least three times, that LeShawn Washington was “Littles,” and Littles shot him.⁷¹

Once Stanley’s call to his mom ended, the Detective re-entered the interview room and telephoned Stanley’s mom, speaking to her about her phone conversation with Stanley. The Detective then interviewed Stanley further. Stanley confirmed the Defendant was the person who shot him, and he admitted firing back at the Defendant.⁷² And, Stanley specifically identified Leshawn Washington as “Littles” who shot him, picking him out of a photographic line up.⁷³

When the State concluded playing Stanley’s § 3507 statement, the prosecution continued Stanley’s direct examination. Contrary to his recorded statement, Stanley denied Defendant shot him⁷⁴ and claimed he lied to his mother.⁷⁵ Stanley did admit to firing his gun in the bowling alley,⁷⁶ and he told the jury the unwritten rule on “the streets” was that people are not to cooperate or speak to the police.⁷⁷

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ D.I. 45, October 27, 2011 Trial Tr. 68:14-18.

⁷⁵ *Id.*, 71:1-13.

⁷⁶ *Id.*, 90:22-91:8.

⁷⁷ *Id.*, 100:8-20.

While the jury was instructed to consider the credibility of all witnesses, including Stanley, it would be reasonable for the jury to conclude that Stanley's statements to his mother were truthful, and his identification of Defendant as the person who shot him, in consideration of all the evidence, was reasonable for the jury to adopt as a proven fact.

A review of Stanley's recently submitted affidavit⁷⁸ demonstrates it is fictitious. Stanley claims he was "under the influence of multiple drugs mixed with morphine," and he was "denied medical treatment" despite "repeatedly ask[ing] for it throughout the hours long interrogation." Neither statement is accurate, as proven by Stanley's clarity and demeanor while being interviewed, and the post-*Miranda*, § 3507 interview with the police.⁷⁹ Stanley's affidavit also asserts he "never picked Leshawn Washington out of any photo line up or photo array, nor did [he] tell anyone from New Castle County Police Department that Leshawn Washington specifically is the person who shot me."⁸⁰ But Stanley's § 3507 statement proves otherwise as it depicts him identifying Defendant from a photo array.⁸¹ Stanley's affidavit claims he asked for medical treatment "once again" due to his gunshot wounds "profusely bleeding," and the police placed him in a cold cell and told him he "wouldn't be

⁷⁸ D.I. 89, Defendant's Letter with Stanley Affidavit.

⁷⁹ Ct. Ex. 2.

⁸⁰ D.I. 89, Defendant's Letter with Stanley Affidavit.

⁸¹ Ct. Ex. 2.

going to the hospital till [he] gave them a name or told them who else was shooting that night, even though [he] previously consistently told [the police he] did not know who shot [him] or who else was shooting.”⁸² But, as the § 3507 statement demonstrates, Stanley never asked for medical treatment, and the police said no such thing. Defendant’s affidavit is not credible.

Moreover, Stanley’s affidavit is not “new” evidence. Stanley testified at trial, as a prosecution witness, and Defendant’s counsel received a copy of Stanley’s recorded police interview prior to trial. Stanley’s affidavit is a revised version of his January 29, 2011 police interview and trial testimony.

Assuming for argument’s sake Stanley’s affidavit meets the definition of “new” evidence, it still fails to create a strong inference that Defendant is innocent in fact of the acts for which he was convicted. The affidavit does not claim the Defendant is innocent, and does not provide evidence that any person other than Defendant committed the crime. It also fails to establish that no reasonable jury would have found Defendant guilty beyond a reasonable doubt.

2. JoeQuell Coverdale

Defendant offers as “new” evidence a transcript of a July 17, 2020 interview a private investigator conducted with Coverdale.⁸³ Coverdale was originally

⁸² D.I. 89. Defendant’s Letter with Stanley Affidavit.

⁸³ D.I. 68, App. at 4-17.

interviewed by the police on February 3, 2011, and on October 26, 2011, Coverdale testified as a prosecution witness during Defendant's trial.⁸⁴

At trial, Coverdale testified that he and the Defendant, along with "Gary" and Brown, were at the bowling alley on January 28, 2011.⁸⁵ He claimed he and Gary drove in one car, and the Defendant and Brown, who they had met up with earlier in the day, arrived separately.⁸⁶ When Coverdale and Gary arrived at the bowling alley, they remained in the car and smoked marijuana, while the Defendant and Brown entered the bowling alley.⁸⁷ According to Coverdale, the Defendant stated "I think I got him, I think I got him, I hit him."⁸⁸ He also saw the Defendant with a black handgun after the shooting,⁸⁹ and explained the motive for the shooting was an ongoing beef between Defendant and Stanley.⁹⁰

In the July 17, 2020 transcript, Coverdale recants his trial testimony.⁹¹ He denies being at the bowling alley on January 28, 2011. He also claims to have no recollection as to where he was on that date;⁹² he claims he falsely testified he was at the bowling alley because he thought it could help him with some pending charges,

⁸⁴ D.I. 43, 166:19 – 216:23.

⁸⁵ *Id.*, 168:6–169:15.

⁸⁶ *Id.*, 169:1-23.

⁸⁷ *Id.*, 171:1-22.

⁸⁸ *Id.*, 173:8-10. Coverdale understood Defendant's statements as an admission he shot Stanley.
Id., 173:14-23

⁸⁹ *Id.*, 174:1-6.

⁹⁰ *Id.*, 175:9-22.

⁹¹ D.I. 68, App, at 4-17.

⁹² *Id.*, App. at 4-5.

even though no prosecutor or law enforcement officer discussed testifying in Defendant's trial to obtain any benefit for any pending charges, and he did not identify any pending charges which placed his liberty in jeopardy.⁹³ Coverdale has no recollection of his prior trial testimony, and told the investigator anything he did testify to would have been false.⁹⁴

Coverdale's July 17, 2020 recantation is not "new" evidence. It was created more than nine years after Coverdale was a prosecution witness and is a revised version of his February 3, 2011 police interview and October 26, 2011 trial testimony. Coverdale's claim of fabrication is even more suspect and incredible given his testimony was consistent with the trial evidence generally and his lack of motive or self-interest to testify against Defendant. In fact, Coverdale's police interview, recorded by the police at the start of the investigation, was provided to counsel and played for the jury.⁹⁵ Coverdale's recantation, nine years after the shooting, is an exculpatory version of prior inculpatory trial testimony. It is not "new" evidence.

Moreover, Coverdale's July 17, 2020 recantation is not evidence which creates a strong inference that the Defendant is innocent in fact of the charged offenses. Coverdale does not exculpate the Defendant in the 2020 interview

⁹³ *Id.* at 9.

⁹⁴ *Id.* at 8-11.

⁹⁵ Court Ex. 1.

transcript. In fact, he claims he has no knowledge of the events at the bowling alley because *he wasn't there*. He does not assert the Defendant is innocent, and he provides no evidence that any person other than Defendant committed the crime.

3. Gary Clark

Defendant submitted an affidavit from Gary Clark (“Clark”) dated *November 9, 2014*, denying he was at the bowling alley at any time on January 26, 2011.⁹⁶ Clark’s eight-year-old affidavit is not new, and it either contradicts Coverdale’s 2011 trial testimony, or is cumulative evidence of Coverdale’s 2020 recantation. Either way, Clark claims he was not at the bowling alley and has no knowledge of the shooting. Like Coverdale, Clark denies any knowledge of the bowling alley shooting, because he wasn’t there. He does not assert the Defendant is innocent, and he provides no evidence that any person other than Defendant committed the crime.

4. Janard Brown

Defendant submitted an April 6, 2022 affidavit from Brown.⁹⁷ Brown claims he was at the bowling alley “in late January of 2011” with the Defendant, “KJ” and Kennesha Land (“Land”).⁹⁸ Brown claims as the shots rang out in the bowling alley, he and the Defendant “ran toward the front entrance.”⁹⁹ Brown claims they then got

⁹⁶ Coverdale originally testified in 2011 that he and “Gary” went to the bowling alley together on the day of the shooting. D.I. 68, App. at 2.

⁹⁷ *Id.*, App. at 3.

⁹⁸ *Id.*

⁹⁹ *Id.*

into a vehicle with Land and KJ, and left the bowling alley.¹⁰⁰ Brown also claims he tried to attend Defendant's trial. He learned, "either that day or a day later," that Coverdale testified that he "took [the Defendant] to or from the bowling alley."¹⁰¹ Brown claims he and Land went to the Courthouse and informed Defendant's attorney that Coverdale "told a lie," and he was willing to testify to that effect.¹⁰²

Brown's affidavit is not "new" evidence. Brown was inside the bowling alley with the Defendant when the shooting erupted, and he is observed on the surveillance video entering and leaving the bowling alley with Defendant. His 2022 affidavit reflects information he possessed prior to Defendant's 2011 trial. Brown's affidavit is devoid of specific details about the shooting – he fails to identify any other person who fired a weapon in the bowling alley, and he does not exculpate Defendant by claiming Defendant did not fire a weapon. Brown's Affidavit does not create a strong inference that Defendant is innocent in fact of the acts underlying the charged offenses, and it fails to establish that no reasonable jury would have found Defendant guilty beyond a reasonable doubt.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

5. Kennesha Land

Finally, Defendant submits a December 3, 2021 interview transcript of Land.¹⁰³ Land claims she drove to the bowling alley with Defendant, Brown and Kirk Flowers (“Flowers”).¹⁰⁴ Land claims Brown and the Defendant immediately exited the car and entered the bowling alley,¹⁰⁵ while she and Flowers entered the bowling alley a short time later. Land claims the gunfire started after she and Flowers were in the bowling alley for about ten minutes.¹⁰⁶ She and Flowers exited the bowling alley and returned to her car.¹⁰⁷ A short time later, the Defendant and Brown arrived back at the car, and the four of them drove away from the bowling alley.¹⁰⁸ While Land denied seeing anyone in the car with a gun, she fails to provide any specific details of the shooting.¹⁰⁹

Land’s transcript is not “new” evidence. She was a potential witness known to the Defendant prior to trial. Land’s transcript also fails to create a strong inference that the Defendant is innocent in fact of the acts underlying the charges of which he was convicted. In fact, Land places the Defendant inside the bowling alley prior to and during the shooting, and fleeing the area immediately thereafter. Like Brown,

¹⁰³ D.I. 68, App. at 18-28.

¹⁰⁴ *Id.*, App. at 20.

¹⁰⁵ *Id.*, App. at 22.

¹⁰⁶ *Id.*, App. at 23.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*, App. at 23-24.

¹⁰⁹ *Id.*, App. at 24-25.

Land fails to exculpate the Defendant. She does not claim the Defendant did not fire a handgun in the bowling alley, and she does not identify any other person who fired a handgun in the bowling alley.¹¹⁰ Land's interview transcript does not create a strong inference that Defendant is innocent in fact of the acts underlying the charged offenses.

c. Defendant does not claim he is innocent in fact.

Finally, Defendant's Motion does not claim he is "actually innocent in fact." In fact, Defendant disavows this burden, arguing he does not have to "prove he is innocent," he just has to present "new" evidence.¹¹¹ Defendant explains:

Defendant's claim of innocence is procedural, rather than substantive. Defendant's constitutional claims are not based on his innocence, but rather on his contention that constitutional errors occurred at his trial. Defendant is asking the Court to embrace the concept of gateway to actual innocence.¹¹²

Defendant's affidavits and interview transcripts are a cumulative attempt, nine years after conviction, to support a claim that Coverdale gave false testimony at trial, which Coverdale now claims through his affidavit. None, individually or cumulatively, are new evidence that speaks with such persuasive force as to create a strong inference that Defendant is actually innocent in fact of the acts underlying his convictions. Defendant has failed to overcome the procedural hurdles of Rule

¹¹⁰ *Id.*, App. at 26. Land denied having "any idea who was responsible for the shooting."

¹¹¹ D.I. 68, at 7.

¹¹² *Id.*, at 24.

61(i)(1)-(5) and he has not met the exacting standards of Rule 61(d)(2)(i). As such, his Motion and claims are subject to summary dismissal.

CONCLUSION

Delaware courts have consistently acknowledged that meritorious claims of actual innocence are extremely rare,¹¹³ and Defendant's Motion proves no exception to the general rule. Defendant's 2022 postconviction motion is procedurally barred as time barred and repetitive. Moreover, five of Defendant's claims are procedurally barred as they were previously raised in the 2016 Petition for a Writ of Habeas Corpus, and the remaining ten claims are procedurally barred as they were not previously raised during trial, on direct appeal, or in a prior postconviction proceeding. And, Defendant has failed to plead "with particularity that new evidence exists that creates a strong inference that [he] is actually innocent in fact of the acts underlying the charges of which he was convicted."¹¹⁴

¹¹³ *Purnell v. State*, 254 A.3d 1053, 1100 (Del. 2021).

¹¹⁴ Super. Ct. Crim. R. 61(d)(2)(i).

For all of the aforestated reasons, I recommend the following:

- (a) Defendant's June 22, 2023 Motion to Amend is **GRANTED** to include the 14th and 15th claims in Defendant's Motion for Postconviction Relief;
- (b) The Motion for Postconviction Relief is **SUMMARILY DISMISSED AS PROCEDURALLY BARRED**; and
- (c) Defendant's Motion for an Evidentiary Hearing is **MOOT**;

IT IS SO RECOMMENDED.

/s/ Martin B. O'Connor

Commissioner Martin B. O'Connor

oc: Prothonotary
Joseph Grubb, Deputy Attorney General
LeShaun Washington